

Kenneth Miller  
Name  
Hwy 84/285 bld 19350  
Hernandez, NM 87532  
Address

FILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO  
2016 SEP 12 AM 8:51  
CLERK-SANTA FE

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

Kenneth Miller, Plaintiff  
(Full Name)

CASE NO. CV 16-1013 KK  
(To be supplied by the Clerk)

v.

Robert Montoya Defendant(s)

CIVIL RIGHTS COMPLAINT  
PURSUANT TO 42 U.S.C. §1983

A. JURISDICTION

1) Kenneth Miller, is a citizen of US  
(Plaintiff) (State)  
who presently resides at Hwy 84/285 19350 Hernandez  
(Mailing address or place of confinement)  
NM

2) Defendant Robert Montoya is a citizen of  
(Name of first defendant)  
PO BOX 360 Espanola NM 87532, and is employed as  
(City, State)  
\_\_\_\_\_. At the time the claim(s)  
( Position and title, if any)  
alleged in this complaint arose, was this defendant acting under color of state law?  
Yes ☐ No ☐ If your answer is "Yes", briefly explain:

- 3) Defendant Robert Montoya is a citizen of \_\_\_\_\_  
(Name of second defendant)  
\_\_\_\_\_, and is employed as \_\_\_\_\_  
(City, State)  
\_\_\_\_\_. At the time the claim(s)  
( Position and title, if any)  
alleged in this complaint arose, was this defendant acting under color of state.  
Yes ☐ No ☐ If your answer is "Yes", briefly explain:

(Use the back of this page to furnish the above information for additional defendants.)

- 4) Jurisdiction is invoked pursuant to 28 U.S.C. §1343(3), 42U.S.C. §1983. (If you wish to assert Jurisdiction under different or additional statutes, you may list them below.)

## B. NATURE OF THE CASE

- 1) Briefly state the background of your case.

I gave Mr. Montoya a notarized copy of attached letter labeled Exhibits A<sup>and B</sup>, stating my rights to the property, I am making mortgage payments on. Also please see purchase agreement Exhibit C. Mr. Montoya, after receiving these documents said, if ~~I~~ did not sell him back his building for \$1,000 that he would kill me. He made this statement in front of his grand daughter. Police report Exhibit D is also attached. -2- A couple other incidences occurred. In one of them Mr. Montoya threatened to jail an employee working for me who was putting up a fence (police report pending for second incident) continued on next page

Several time both Robert Montoya came into my establishment when I was not there and I returned he was reading my business documents and looking around. Later I put a fence so he could not walk in the back door of the building and that is when he threatened my worker.

### C. CAUSE OF ACTION

- 1) I allege that the following of my constitutional rights, privileges or immunities have been violated and that the following facts form the basis for my allegations: (If necessary, you may attach up to two additional pages (8 1/2" x 11") to explain any allegation or to list additional supporting facts.

A)(1) Count I:

1. Mr. Montoya threatened to kill me if I did not sell back his property
2. He violated my rights of ownership to property I am purchasing from him
3. Violated right to privacy when he walked into building w/out my permission
4. Threatened to jail an employee who was not breaking the law - told

(2) Supporting Facts: (Include all facts you consider important, including names of persons involved, places and dates. Describe exactly how each defendant is involved. State the facts clearly in your own words without citing legal authority or argument.)

the employee "I will have you  
put in jail"

and told the employee that  
I did not own this property  
I was making payments on  
and that he (Mr. Montoya) could  
have me evicted any time  
he wanted to. Told me the  
next day "it is who you  
know"

B)(1) Count II:

(2) Supporting Facts:

C)(1) Count III:

(2) Supporting Facts:

D) PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?

Yes ☐ No ☒ If your answer is "YES", describe each lawsuit. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

a) Parties to previous lawsuit.

Plaintiffs: \_\_\_\_\_

Defendants: \_\_\_\_\_

b) Name of court and docket number:

c) Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

d) Issues raised: \_\_\_\_\_

- e) Approximate date of filing lawsuit: \_\_\_\_\_
- f) Approximate date of disposition: \_\_\_\_\_

- 2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part C. Yes ☐ No ☒ If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No," briefly explain why administrative relief was not sought.

E. REQUEST FOR RELIEF

- 1) I believe that I am entitled to the following relief:

\_\_\_\_\_  
Signature of Attorney (if any)

\_\_\_\_\_  
Signature of Petitioner

Attorney's full address and telephone  
number.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. Sec. 1746. 18 U.S.C. Sec. 1621.

Executed at \_\_\_\_\_ on \_\_\_\_\_ 20\_\_\_\_.  
(Location) (Date)

  
\_\_\_\_\_  
(Signature)

EX 1

March 30, 16

Robert Montoya  
PO BOX 360  
Espanola, NM 87532

Dear Robert,

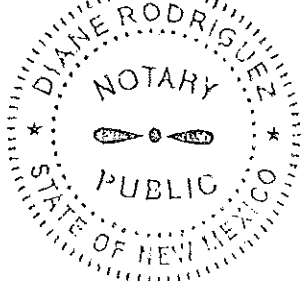
I Kenneth Miller, Highway 84/285, building 19350, in Hernandez am buying the land and building with no agreement to share well or mineral rights of this land. I Kenneth Miller am the soul buyer of property with an agreement from Robert Montoya. I Kenneth Miller came to an agreement in July 2015 to purchase the building and land. I Kenneth Miller do not agree to give no water rights or other mineral rights to this land to no one. Before I moved to this location Robert Montoya was paying anywhere from \$90-100 or more a month for utilities, but when I moved in he quit paying. He should still be paying this because of the use of the well. I Kenneth Miller do not agree to pay his share of the utilities. I Kenneth Miller am due back pay for utilities from Aug. 2015- April 2016 and every month there after in the amount of \$1,000. I should receive \$100 a month by the 3<sup>rd</sup> of each month in cashiers check or money order. Mortgage check is attached to this letter. You have 10 days to respond or I Kenneth Miller will cut off all water use of my well.

Sincerely,

Check # 3321678

*Kenneth Miller*

Kenneth Miller



SUBSCRIBED AND SWORN TO BEFORE ME  
THIS 31 DAY OF Mar., 20 16  
BY Kenneth Miller  
*[Signature]*  
NOTARY PUBLIC FOR THE STATE OF NEW  
MEXICO, COUNTY OF LOS ALAMOS  
MY COMMISSION EXPIRES: 08-24-19



Ex 1 B



**LANB**

Creating a better way.

Main Office  
1200 Trinity Drive / P.O. Box 60  
Los Alamos, NM 87544-0060  
www.lanb.com / (505) 662-5171

Reference:

[MJB/2 T-98921]

Remitter:

Kenny's North Carolina BBQ, LLC

55 O'Go Wji

Santa Fe, NM 87506-0922

**3321678**

MJB 95-101/1070

March 31, 2016

For:

for mortgage—highway 84/285 bldg 19350 Hermande

Pay:

\*\*\* One Thousand And 00/100 Dollars \*\*\*

To The  
Order  
Of:

\*\*\*Robert Montoya\*\*\*

\$1,000.00

Cashier's Check

- NOT NEGOTIABLE -

- CUSTOMER RECEIPT ONLY -



PROPERTY	PROPERTY STATUS		1-RECOVERED (STOLEN THIS JURIS)		2-STOLEN & RECOVERED		3-RECOVERED (STOLEN THIS JURIS)		4-RECOVERED (STOLEN THIS JURIS)		5-EVIDENCE		6-LOST		7-FORGED		8-COUNTERFEIT/FORGED		9-DAMAGED/DESTROYED/MANDALIZED		10-BURNED		11-SEIZED		12-USED IN CRIME		13-SAFEKEEPING		14-UNKNOWN		15-EMBEZZLED																																											
	PROPERTY TYPE		02-ALCOHOL		04-BICYCLES		06-CLOTHES/FURS		07-COMPUTER HARDWARE/SOFTWARE		08-CONSUMABLE GOODS		09-CREDIT/DEBIT CARDS		10-DRUGS/NARCOTICS		11-DRUG/NARCOTIC EQUIPMENT		12-FARM EQUIPMENT		13-FIREARMS		14-GAMBLING EQUIPMENT		15-HEAVY CONSTRUCTION/HEAVY EQUIP.		16-HOUSEHOLD GOODS		17-JEWELRY/PRECIOUS METALS		18-LIVESTOCK		19-MERCHANDISE		20-MONEY		21-NEGOTIABLE INSTRUMENTS		22-NON-NEGOTIABLE INSTRUMENTS		23-OFFICE EQUIPMENT		24-PURSES/HANDBAGS/WALLETS		25-RADIOS/TVS/VCRs		26-RECORDINGS-AUDIO/VISUAL		27-STRUCTURES-SINGLE OCCUPANCY		28-STRUCTURES-OTHER DWELLINGS		29-STRUCTURES-OTHER COMM/BUSINESS		30-STRUCTURES-INDUSTRIAL/MANUF.		31-STRUCTURES-PUBLIC/COMMUNITY		32-STRUCTURES-STORAGE		33-STRUCTURES-OTHER		34-TOOLS		35-VEHICLE PARTS/ACCESSORIES		36-SKIS/SKI EQUIP		37-OTHER		38-PENDING INVEN		39-SPECIAL CAT.	
	DRUG TYPE		A-CRACK		B-COCAINE		C-HASHISH		D-HEROIN		E-MARIJUANA		F-MORPHINE		G-ORPUM		H-OTHER NARCOTICS		I-LSD		J-PCP		K-OTHER HALLUCINOGENS		L-AMPH/METHAM.		M-OTHER STIMULANTS		N-BARBITUATES		O-OTHER DEPRESSANTS		P-OTHER DRUGS		Q-UNKNOWN		R-OVER THREE TYPES																																					
	FIELD UNIT OF MEASURE		GM-GRAM		KG-KILOGRAM		OZ-OUNCE		LB-POUND		GL-GALLON		NP-NO. PLANTS		LT-LITER		FO-FLUID OUNCES		DU-DOSAGE UNITS		ML-																																																					
	PROPERTY STATUS	PROPERTY TYPE	TYPE OF ITEM		MAKE / BRAND		MODEL		CALIBER		VALUE (EXCEPT DRUGS)																																																															
	SUSPECTED DRUG TYPE	QUANTITY/ UNIT OF MS	DESCRIPTION (COLOR, SIZE, FEATURES, ETC.)		SERIAL / OAN		DATE RECOV.		NIC NO.																																																																	
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M.O. EVENT CODES: (AGENCY OPTIONAL USE)												TOTAL VALUE STOLEN				TOTAL VALUE REC.																																																										
SYNOPSIS	Individual came into the Sheriff's Office to report a threat made by his landlord.																																																																									
	<p>On the date of May 10<sup>th</sup>, 2016 at 0930 hours, while on regular patrol in a marked Rio Arriba County Sheriff's Office patrol unit, within the boundaries of Rio Arriba County, the State of New Mexico, wearing the patrol uniform of the Rio Arriba County Sheriff's Office displaying my badge of office, I was dispatched to the Rio Arriba Sheriff's Office in reference to a walk in report of a treat. I made contact with Kenneth Miller, owner of Kenny's Bar-B-Q, Mr. Miller reports that last week his landlord Robert Montoya came to the store front being purchased by Mr. Miller from Mr. Montoya and told him "If I don't get my \$1000 I will kill you". Mr. Miller after thinking about the incident feels he should report it to Law Enforcement. It appears that Mr. Miller in signing a contract to buy the "Montoya's Store" in Hernandez, signed an agreement to assume water and electric, not knowing that the home belonging to Mr. Montoya was also connected to the same utilities as the store front. When Mr. Miller shut off water at the main it also shut off water to Mr. Montoya's home and that is when Mr. Montoya confronted Mr. Miller. There was no specific treat of harm or death and Mr. Montoya did not show or imply a weapon. Mr. Mille/was informed that this case would be listed as a misdemeanor and he said he did not want Mr. Montoya arrested or cited but wanted simply for the Sheriff's Office to be aware of the situation. Mr. Miller was also directed to the Rio Arriba Magistrate Court for assistance with the civil side of this incident involving the buyer's contract and the utilities in question.</p>																																																																									
CERT. / STATUS	I WILL PROSECUTE/TESTIFY SHOULD THE OFFENDER BE ARRESTED?		YES	NO	I UNDERSTAND IT IS A CRIMINAL OFFENSE TO FILE A FALSE REPORT TO POLICE*		COMPLAINANT / VICTIM CERTIFICATION SIGNATURE		X	DATE																																																																
	REPORTING OFFICER		RR Sanches		RANK	LT	I.D. NO.	RA4	DATE	5/10/16	DETECTIVE / FOLLOW UP OFFICER / REFERRED TO	I.D. NO.	DATE																																																													
	ASSISTING OFFICER				RANK		I.D. NO.		DATE		PROCESSED BY	DATE	DATA ENTRY PERSON	DATE																																																												
	APPROVING OFFICER		Martin Trevino / RA-17		RANK	US	I.D. NO.	RA2	DATE	5/10/16	INCIDENT STATUS		EXCEPT CODE	DATE																																																												
	AGENCY OPTIONAL USE (DISTRIBUTION, OTHER OFFICERS, ETC.)										CASES CLEARED BY THIS ARREST																																																															

524

July 10, 2015

This Document is prepared for the sale of property belonging to Robert Montoya and Rose Ellen Montoya.

Robert Montoya and Rose Ellen Montoya have entered into an agreement for the sale Of property in El Guache New Mexico. The property, consists of a 2000 square foot building plus refrigerators and compressor and shelving in building. The amount of property that the building is situated on is three quarters of an acre included in the total price.

The total estimated amount of \$200,000 assessed at a finance rate of 5.5% will be figured

On an amortization table for the extent of time based at \$1,000 per month.


Any extra payments made in addition to monthly rate will be deducted from total amount.

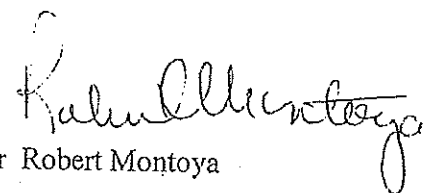
Buyer will provide ingress and egress until final payment.

A survey will be enacted upon completion of payments for said Property.

Monthly payment will be made by Kenny Miller on or about the first of each month, or an agreed day with Mr. Miller

Payment will be made on agreed date with no leeway. Missed payments cannot be tolerated. Foreclosure will result after first missed payment.

  
Buyer

  
Seller Robert Montoya

Buyer

Seller Rose Ellen Montoya

Bldg 19350  
Hwy 84/285  
Hernandez N.M  
87537  
753-4277